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French and foreign court decisions

Arbitral awards

Interview with Jeanne Veillerot

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FOREWORD

Paris Baby Arbitration is a Parisian association and an international forum aiming the promotion of young arbitration practice, as well as the accessibility and the popularizing of this field of law, still little known.

Each month, its team has the pleasure to present you the Biberon, an English and French newsletter, intended to facilitate the lecture of the latest and the most prominent decisions given by states and international jurisdictions, and the arbitral awards.

For this purpose, Paris Baby Arbitration encourages the collaboration and the contribution of the younger actors in arbitration.

Paris Baby Arbitration believes in work, goodwill and openness values, which explain its willingness to permit younger jurists and students, to express themselves and to communicate their passion for the arbitration.

Finally, you can find all the previously published editions of the Biberon and subscribe to receive a new issue each month on our website: babyarbitration.com.
We also kindly invite you to follow us in our LinkedIn and Facebook pages and to become a new member of our Facebook group.

Have a pleasant reading!

FRENCH COURTS

COURTS OF APPEAL

Paris Court of Appeal, April 6, 2021, n° 20/13048 Société GBO c/ S.A.S CA. FINANCE and S.A.S.U CA. INTERNATIONAL

Contributed by Arthur ETRONNIER

The company GBO under German law and the company CA INTERNATIONAL under French law are in business relations with the aim of marketing children's shoes made in China. The company CA FINANCE is the holding company of which CA INTERNATIONAL is a part and of which it is the president. The relationship between CA INTERNATIONAL and GBO is governed by a framework agreement entered into on February 21, 2017, which contains an arbitration clause.

A dispute arose between the two companies - CA INTERNATIONAL and GBO - which resulted in the setting up of a three-arbitrator arbitration procedure at the request of GBO. GBO also requested an extension of the proceedings to include CA FINANCE. The arbitral tribunal granted this request, considering that CA FINANCE had tacitly accepted the tribunal's jurisdiction. However, GBO's request concerning the date of the hearing was rejected on the grounds that the arbitral tribunal did not have jurisdiction over CA FINANCE, which had to sign the Terms of Reference. GBO therefore appealed to the Supporting Judge requesting that he order CA FINANCE to participate in the proceedings by signing the Terms of Reference.

By judgment dated September 2, 2020, the Supporting Judge dismissed GBO's claims on the grounds that he lacked jurisdiction to respond to them.

GBO therefore appealed, requesting in particular that the judgment rendered by the supporting judge be set aside, that CA FINANCE be enjoined from participating in the arbitration proceedings and that CA FINANCE be ordered to pay the costs. It

considered that the judge in charge of the arbitration had committed a negative excess of power.

CA FINANCE, for its part, requested that the appeal filed by GBO be declared inadmissible and that GBO be ordered to pay the costs of the proceedings.

Finally, CA INTERNATIONAL also asked the appeal judges to declare the appeal inadmissible and to confirm the first instance judgment.

In its appeal, GBO justified its recourse to the judge following the non-participation of CA FINANCE in the arbitration procedure, thus causing a blockage. It maintained, also to support its argument, that its request fell within the field of competence of the latter. Indeed, this procedure had taken the form of an ad hoc arbitration, the supporting judge was thus competent ratione materiae for two reasons. On the one hand, if CA FINANCE refused to participate in the arbitration proceedings, there would be a risk of denial of justice. On the other hand, there would also have been a disagreement in the formation of the tribunal since the third party refused to participate in the proceedings.

According to GBO, these requests concerned the constitution of the said arbitral tribunal, for which the supporting judge is competent in the event of a deadlock. Moreover, the Paris Court of Justice had spatial jurisdiction, according to GBO, given the international nature of the arbitration. GBO therefore considered its claims to be justified and asked the Court of Appeal to set aside the judgment previously rendered while ruling on the merits of the dispute.

On the other hand, according to CA FINANCE, the judge of first instance had validly considered his incompetence since GBO's request did not correspond to the powers attributed to the supporting judge under the Code of Civil Procedure. She also stated that GBO's application for forced participation by CA FINANCE was contrary to the voluntary and contractual aspects of the arbitration and that therefore there was no denial of justice.

Finally, CA INTERNATIONAL argued that there had been no negative excess of power on the part of the court of first instance. Consequently, it considered that the dispute concerned the jurisdiction of the arbitral tribunal towards CA FINANCE

but that it was validly formed. It also took up, like CA FINANCE, the fact that the supporting judge could not force a party to intervene during an arbitration.

The Paris Court of Appeal responded in two stages, first ruling on the appeal for nullity and then on the request to set aside the judgment.

With regard to the appeal of nullity, the judges of appeal recall that the orders of the supporting judges are not subject to appeal. They can be appealed when the judges consider that there can be no appointment because the arbitration clause is clearly null or unenforceable. However, the judge in charge of the appeal was not asked to answer this question in this case. However, the Court of Appeal considers that an appeal for nullity is always possible when a decision is so seriously flawed that it is a matter of international public policy, such as when the judge commits a negative excess of power, thus creating a risk of denial of justice.

Subsequently, the Court of Appeal clarified the scope of the supporting judge's powers under articles 1452 to 1458 of the Code of Civil Procedure. In particular, the judge has jurisdiction in the event of a deadlock in the appointment of arbitrators by the parties. In this case, the judges considered that the arbitrators had been appointed without difficulty. In their view, the dispute concerned the forced participation of a party in the proceedings. The supporting judge was not competent to decide this issue. Similarly, GBO did not show how there had been a denial of justice.

The Court then established the principle that, where the arbitration agreement is extended to a third party - by virtue of the jurisdictional principle - the refusal of the latter to participate in the arbitration proceedings must be treated by the arbitrators in the same way as a refusal by a signatory to an agreement. The Court therefore dismissed GBO's claims and ordered it to pay the costs of the appeal.

Paris Court of Appeal Pôle 5 – 16th chamber, April 13 2021, n° 18/17862

Contributed by Samia KRISSANE

On April 13, 2021 Paris Court of Appeal partially granted the exequatur to an arbitration award rendered by the arbitral tribunal of Tunis, opposing the companies Ferrovail S.A to its sub-contractor.

On May 20, 1997 Ferrovail S.A. and Hyundai, constituted as a consortium, concluded a contract with the Ministry of Equipment and Housing of the Republic of Tunisia for the construction of an Olympic stadium in Tunis. On June 15, 1999 Ferrovial S.A. concluded a contract with a Tunisian sub-contractor entrusting it with the execution of the works, followed by an agreement fixing the completion date of the works on January 31, 2001. This contract included an arbitration clause.

A dispute arose between the parties concerning a holdback made by the construction company and contested by the sub-contractor, as well as a payment claim for additional work.

Based on the arbitration clause stipulated in the contract, the subcontractor filed a second arbitration claim on April 30, 2010, following the dismissal of its jurisdiction by the court seized by the first claim, against Ferrovial S.A. before the Tunis arbitration Court.

The arbitral tribunal granted the claims, Ferrovial Agroman subsequently filed an appeal for annulment of the award before the Tunis Court of Appeal on August 20, 2001.

By application dated 13 February 2018, the subcontractor requested the exequatur of the award before the Tribunal de Grande Instance of Paris which was granted by a decision dated on February 19, 2018.

Ferrovial Agroman appealed against this decision before the Paris Court of Appeal on July 17, 2018 on the grounds that the tribunal did not comply with the mission entrusted to it, through the lack of grounds of the award and the fact that it awarded compensation for unsolicited damages (ultra petita) (i), the violation of the principle

of an adversarial proceeding (ii) and the violation of French international "ordre public" (iii).

The Respondent's pleadings were declared inadmissible because they were served late. The closing order was issued on December 3, 2020.

The Paris Court of Appeal rejected the first plea on the grounds that the absence of the date and place on the award did not cause any prejudice to the appellant and had no effect on the outcome of the dispute.

Furthermore, the Court of Appeal rejected the second plea alleging the lack of a statement of reasons for the arbitral award. Regarding the statement of reasons for the admissibility of the subcontractor's claim, the Court considered that the tribunal had given a perfect statement of reasons for its decision, noting that Ferrovial Agroman could not rely on the terms of the annex to the subcontract to justify a dismissal of the claim against its sub-contractor.

However, the Court accepted the plea that the rejection of Hyundai's application for forced intervention filed by the sub-contractor in the application initiating the proceedings on 10 December 2008 was not reasoned, although this did not affect the award in its entirety, since the lack of reasoning related to a divisible decision, because this application had been filed in the summary judgment by the sub-contractor but had not been included in its application on the merits.

The Court of Appeal dismissed the pleas alleging compensation for ultra petita damage, the annulment of the annex and the complaint alleging "estoppel" as well as the violation of French international "ordre public".

The court thus grants the exequatur of the arbitration award rendered on February 19, 2018 apart from the head rejecting the application for forced intervention.

Aix-en-Provence Court of Appeal, April 15, 2021, n° 18/09791

Contributed by Célia KUHN

DGM AUTOMOBILE has sold its business to DGM AUTOS. The transferee company sued the ceding company for annulment of the sale before the Draguigan Commercial Court. The latter, by judgment of July 7, 2015, suspended the proceedings and referred the parties to seize the arbitral tribunal, in accordance with the agreement contained in the contract of sale. The arbitral tribunal, by award of October 27, 2016, then dismissed the DGM AUTOS company of its request for cancellation of the sale. The company then appealed for annulment before the Paris Court of Appeal, which dismissed it in its judgment of 22 January 2019.

DGM AUTOS had also petitioned the execution judge of the Draguignan High Court. By his order of August 31, 2016, he authorized him to register a judicial mortgage on the property belonging to the manager of the company DGM AUTOMOBILE and his wife. The company DGM AUTOS had thus sued them before the Pontoise Hight Court, which, by order of October 10, 2017 stayed the proceedings pending the judgment of the Paris Court of Appeal.

The manager and his wife assigned DGM AUTOS before the enforcement judge of the Draguignan High Court for the purposes of revocation and cancellation of the order of August 31, 2015 and release of the provisional mortgage registration. By judgment of May 29, 2018, it traced the order and dismissed the request to have it declared null and void and ordered the release of provisional mortgage registration.

The judge considered that in the context of the proceedings initiated on the merits by DGM AUTOS, the pre-trial counselor granted his request for a stay of proceedings after noting that the means supported before the arbitral tribunal for to obtain the cancellation of the transfer are strictly identical to those raised to bring into play the responsibility of the spouses with the company DGM AUTOMOBILE.

It was therefore qualified as faults separable from his functions for the manager and deceitful maneuvers for the wife. In addition, the judge recalled that an arbitration award has, from its pronouncement, the authority of res judicata. In doing so, he considered that the company DGM AUTOS does not justify a well-founded claim against the spouses.

The Aix-en-Provence Court of Appeal, by its judgment of 23 January 2020, declared DGM AUTOS admissible in its request for a suspension of proceedings but dismissed it and ordered the reopening of the proceedings by inviting it to conclude on the substance.

Thus, the petitioner company filed its last conclusions on November 5, 2019 for the purposes of suspending the ruling, in the interest of the good administration of justice, pending the judgment of the Court of Cassation on the appeal against the judgment of the Paris Court of Appeal of 22 January 2019. The respondent spouses filed their conclusions for the purposes of declaring inadmissible the appellant's request for a stay of proceedings, to confirm the judgment rendered on May 29, 2008, and to say that the company DGM AUTOS will retain the final charge of all costs relating to the mortgage, including release.

The Aix-en-Provence Court of Appeal recalled that, unsuccessful of its request for a stay of proceedings, the SARL DGM AUTOS did not conclude on the merits as it was invited to do by the judgment of January 23, 2020. In doing so, it considered that it was necessary to apply the provisions of Article 381 of the Code of Civil Procedure. It therefore ordered that the case be struck out for lack of due diligence and that it be withdrawn from the list of pending cases.

FOREIGN COURTS

Republic of Sierra Leone v SL Mining Ltd [2021] High Court of justice, England and Wales 929 (Comm), Avril 16, 2021

Contributed by Paul-Raphael SHEHADEH

The judgement of the High Court, issued on 16 April 2021, in the matter between the Republic of Sierra Leone and SL Mining Limited ("SLM") concerned an application by SLM for a costs order against the Republic of Sierra Leone ("Sierra Leone") on an indemnity basis. This followed Sierra Leone's discontinuance of one of its challenges to the ICC Arbitrators' jurisdiction under section 67 of the Arbitration Act 1996.

The discontinued challenge was based on the foreign act of state doctrine, whereby English Courts do not examine the legality of acts of a foreign government occurring within the territory of that state.

SLM sought an order for indemnity for costs based on the Civil Procedure Rules 38.6 (1) and 44.9 (1), whereby the starting point is that the party which discontinues proceedings is liable for costs, but the court retains discretion to order indemnity for costs where the circumstances call for this. Jurisprudence indicates that a "*significant level of unreasonableness or otherwise inappropriate conduct in its widest sense*" for the court to order indemnity costs (as cited by this judgement: *National Westminster Bank plc v Rabobank Nederland* [2008] 3 Costs LR 396 at 28).

In support of its application, SLM raised the following conduct by Sierra Leone: i) repeated non-compliance with orders of the Arbitration Tribunal and Emergency Arbitrator, including peremptory orders and including costs orders; ii) repeated non-compliance with orders of the High Court for payment of costs; iii) late service of the notice of discontinuance; iv) various other instances of inappropriate conduct by Sierra Leone, including late inclusion of allegations of SLM's corruption in the arbitration.

The Court catalogued the various instances of Sierra Leone's failure to comply with costs orders in the Arbitration and before the High Court, concluding that this conduct entitled the court to exercise its discretion to order indemnity costs. This was so especially in view of counsel for Sierra Leone's representations to the court that Sierra Leone intended to comply with such orders.

Responding to SLM's request for a summary assessment of costs, the court makes an order for costs on account to the value of £210,000 on an indemnity basis.

Hydro and others v. Albania, ICSID Case n° ARB/15/28, Decision on Annulment, April 2, 2021

Contributed by Peri Mikayelyan

This annulment proceeding concerns an application for annulment of the Award rendered on April 24, 2019 in the arbitration proceeding between Hydro S.r.l., a company incorporated under the laws of Italy and other investors of Italian nationality (collectively "Claimants" or "Hydro and others") and the Republic of Albania ("Respondent" or "Albania") (ICSID Case No. ARB/15/28) (the "Award").

The Application sets forth three grounds for annulment, one relating to a jurisdictional decision of the Tribunal, one relating to a merits decision, and one relating to damages. Each of the three grounds for annulment advanced by Albania relies on the last of the five grounds set forth in Article 52 of the ICSID Convention, paragraph (1)(e), "that the award has failed to state the reasons upon which it is based".

The Committee first considers the overall standard of review for applications based on Article 52(1)(e). The Committee notes its agreement with the parties that the ICSID Convention favors the finality of awards and provides only limited exceptions to that principle in the interest of fundamental procedural integrity.

The Committee also highlights that annulment is not an appeal. In the Committee's view, ad hoc committees must be especially cautious when considering this specific ground for annulment "not to venture into territory that would implicate an appeal", for example, by requiring the examination of the adequacy or correctness of the reasoning of the Tribunal.

Even though Claimants have argued for a narrow application of the 52(1)(e) exception, the Committee questions whether characterizing the standard as "narrow" versus "broad", or the threshold for annulment as "high" versus "low" provide much assistance in this context. In the Committee's eyes, all of the grounds for annulment, including Article 52(1)(e), need to be strictly construed in light of their fundamental purpose, on which the parties agree, of safeguarding the fundamental procedural integrity of the proceedings.

The Committee next examines different precedents invoked by the parties (MINE v. Guinea, TECO v. Guatemala, Adem Dogan v. Turkmenistan, Vivendi I v. Argentina, etc.) and notes that these authorities provide substantial guidance to this Committee in approaching its task. However, they do not resolve all issues regarding the legal standard that this Application requires the Committee to confront. In particular, the parties have disagreed strongly on the issue of how far a tribunal needs to go in stating reasons.

Respondent has argued that anything outcome-determinative, even "sub-issues" such as the components of a damages calculation which have a material impact on the damages awarded, must be accompanied by reasons. Claimants, in contrast, have pointed to authorities indicating that the "reasons" requirement applies only to the ultimate decisions of a tribunal, criticizing Respondent for seeking to require that there be "reasons for reasons" and even "reasons for reasons for reasons".

In the view of the Committee, the text of the ICSID Convention and the Arbitration Rules are not as clear as might be desirable in relation to this issue. Article 48(3), to which both parties have referred in their submissions, states that: "(3) The award shall deal with every question submitted to the Tribunal and shall state the reasons upon which it is based".

While requiring the award to "deal with" (notably, a term different from "decide") every question, the Convention does not make it an annullable error for an award not to state reasons for every question that is before a tribunal. Article 52(1)(e) of the Convention is to some extent the analogue to Article 48(3), as the MINE v. Guinea committee has pointed out. But Article 52(1)(e) only provides for a right to seek annulment in relation to the second clause of Article 48(3), the requirement for the award to state reasons, and not in relation to the first part, the requirement for it to deal with "every question".

This would seem to indicate that a failure to deal with every "question" is not annullable error, and further, that the "reasons" requirement does not attach to every question. In contrast to the Convention provisions, Rule 47(1)(i) refers to "the decision of the Tribunal on every question submitted to it, together with the reasons on which the decision is based". This indicates that the "questions" are the key unit to which the "reasons" requirement pertains.

In the Committee's view, "Point A to Point B" formulation of MINE v. Guinea cannot be taken to mean that every finding, assumption, or legal conclusion en route to an ultimate decision, whether it relate to jurisdiction, the merits of a dispute, or the issue of quantum, must be expressed in detail. It must have boundaries. On the other hand, the Committee doubts that only ultimate decisions need be explained. Rather, it appears to this Committee that ad hoc committees must strike a balance, and search for intelligibility in the award as a whole, particularly with respect to outcome-determinative questions or analytical units, while recognizing that arbitral tribunals need discretion in how to express the motivation for their decisions.

The first ground for Albania's annulment Application is that the Award failed to state reasons for its decision that indirect investors are protected by the BIT in question. In fact, the three Claimants who were awarded damages by the arbitral tribunal were individuals, all of whose investments in an Albanian firm, Agonset Sh.p.k., were held indirectly through at least one intermediate entity. The issue before the Tribunal was whether the BIT, which was silent on the issue of indirect investors, covered such investors.

Tribunal's approach to the indirect investor question is reflected in paragraphs Articles 495-497 of the Award. In these paragraphs, the Tribunal dealt with several arguments that had been made in relation to the indirect investor issue by Respondent. The Tribunal starts by identifying a potential concern that has been raised by Respondent about claims by minority shareholders, but goes on to explain, including by reference to Claimant's position and legal authority, that that concern does not arise on the present facts, because of the degree of proximity of the indirect investors' holdings to the investment and because the intermediate holding structure was established for the purposes of the investment in question.

The Committee concludes that a reader can readily follow the logical flow of the Tribunal's conclusion on this point and perceive the justification for the Tribunal's conclusion that remoteness is not a concern in this case.

Moreover, the Committee, holding that the Tribunal could have been considerably more detailed in its analysis in multiple respects, agrees with Claimants' observation that paragraph 497 provides evidence that the Tribunal believed it was setting forth reasons in the two paragraphs that preceded it. That subjective view has some weight,

as it demonstrates that the Tribunal was at least attempting to satisfy the requirement for stating reasons.

As a policy matter, the Committee has some sympathy with the Respondent's argument that, particularly for sovereign states having to explain to their citizens why they did not prevail, a more detailed discussion would be helpful and potentially enhance legitimacy. Anyway, the Committee makes clear that its task is not to be prescriptive as to how a tribunal should set out its reasoning.

The Committee also notes, that the jurisdictional objection at issue was only one of eight, along with an admissibility objection. The interest of the Tribunal in being concise in explaining its decision on this question is therefore understandable.

Considering all the above, the Committee therefore declines to annul this part of the Award.

Respondent also made several arguments that the Tribunal failed to state reasons for its decision on the merits in the Award. Particularly it argued that the Tribunal's analysis was contradictory in that Agonset Sh.p.k., an Albanian entity and its affiliate Agonset.it, an Italian entity, were considered to be a single integrated operation for purposes of both jurisdiction and damages, but when it came to a determination on the merits of the expropriation claim, applying a "substantial deprivation" test, the Tribunal only focused on Agonset Albania, without explaining why it did so.

This approach, according to Respondent, failed the MINE v. Guinea test, because it made it impossible to understand how the Tribunal got from "Point A" (that the two entities were an integrated whole) to "Point B" (that to see if the investment was destroyed, only Agonset Albania was considered).

The Committee notes that the issue presented by this ground for annulment is somewhat different than the typical question. In contrast, for example, to the jurisdictional decision, which might be termed a vertical issue, the issue raised by this ground is horizontal—spanning jurisdiction, merits and damages. The Committee finds it useful to retrace the steps of the Tribunal, beginning with jurisdiction, then turning to the issue of expropriation and finally to damages.

The Committee observes at the outset that the Award is not as clear as would be ideal. In particular, there is substantial inconsistency in the Tribunal's use of terminology in relation to the Agonset entities. From the jurisdictional perspective, after reviewing the relationship between the two Agonset entities, and discussing the line of cases that had addressed this issue, the Tribunal finds that the two companies "were, from the outset, conceived as an integrated whole". Accordingly, the two Agonset companies were found to constitute a single "investment" for purposes of the BIT.

From the expropriation and damages' perspective, Respondent argued that the references to entities by the Tribunal were only to "Agonset", a defined term that meant only the Albanian entity. There is no defined term that comprises the two entities, while in some parts of the Award the term "Agonset" was used to designate both entities. The Committee is sympathetic to the submissions of Respondent that once a term is defined, it should be used consistent with the definition.

Even so, in the Committee's view, the Tribunal did in fact conclude within the expropriation section that the expropriation extended to what it had previously determined to represent the full scope of the investment in the territory of Albania, namely Agonset Albania and Agonset Italy, operating as an "indivisible whole" assessing damages accordingly.

In sum, the Committee concludes that the Award a) does not suffer from inconsistency rising to the level of annullable error in its decisions regarding jurisdiction and the merits, or between the merits and damages, by virtue of its decision on expropriation, nor b) does it fail to state reasons for its decisions, particularly its decision on expropriation.

Respondent's final ground for annulment is that the Tribunal failed to state reasons in determining damages. The Committee finds itself in agreement with Claimants as well as other ad hoc committees such as Rumeli v. Kazakhstan that, when it comes to the realm of damages, the decisions of a tribunal should be accorded a special degree of deference.

This follows from the proposition that once the fact of damage has been established from the elements of breach and causation, there is a degree of inherent uncertainty in awarding damages that are forward-looking. As long as the damages are not

speculative or uncertain, but proven with reasonable certainty, the inherent difficulty of proof is factored in and there is no requirement that a claimant prove its damage with exactitude.

The question of what constitutes a "decision" in the context of damages, i.e., what the "analytical units" are that need to be spelled out and evaluated by means of a statement of reasons is one on which the authorities are not clear. In the view of the Committee, it goes too far to say that every issue (or sub-issue) to be decided by a tribunal that has more than a de minimis impact on the determination of quantum requires a statement of reasons. And yet there is some force to the argument that, where a tribunal has discretion, it should explain how it exercised that discretion, which requires spelling out the basic steps and the reasons for deciding these.

In the Committee's view, it is not enough, however, that the damages section of an award be lengthy and detailed. It could be both those things and still be fundamentally contradictory, illogical or unintelligible. The touchstone, as with other aspects of an award, for the Committee is the overall intelligibility, lack of fundamental contradiction and cohesiveness of the ultimate decision on damages. While the tribunal had made one mistake when referencing a certain initial audience share calculation, the Committee deemed it sufficiently clear that this was merely a typo, and thus could not give rise to annulment.

With respect to the costs' submissions, the Committee determines that Respondent should bear all costs of the proceeding, including the fees and expenses of the Committee, ICSID's administrative fees and direct expenses, as well as cover the proportions of Claimants' legal fees and expenses allocated to it in relation to a) the Provisional Stay and b) the remainder of the proceeding.

INTERVIEW WITH JEANNE VEILLEROT

Q1. Hi Jeanne, thank you for taking the time to answer our questions. Would you mind introducing yourself and telling us a little bit about your background?

Hello to the Biberon team, thank you for inviting me.

I studied at Paris II University, where I obtained a Master I in private international law, a Master II in international economic relations law and an LLM in international business law (the last one in Singapore).

I passed the CRFPA in 2014 and was sworn in on 7 February 2018 (a memorable date for any young lawyer who was able to attend in person).

I was very lucky to start as an Associate at Brown Rudnick in London in the arbitration department, in a team composed of solicitors and barristers.

After three years in England, I decided to return to France and to change of practice structure. I am currently an associate at Medici, a young firm recently launched and specialised in commercial litigation and arbitration.

Q2. Could you tell us more about your experience as an Associate in London? How did you experience the impact of Brexit on the English arbitration market?

After my "stage final" at Brown Rudnick in Paris, I had the opportunity to join their UK office as an Associate. It was a wonderful opportunity both professionally and personally, as I wanted to join my fiancé who was in London at the time. I spent

three years there surrounded by a great team (in London and Paris) and I can't thank them enough.

London is a great place for arbitration. It attracts a wide variety of clients, often diverse but fast paced. I found the timeframes much more challenging in England than France, and consequently the approach to each case is very pragmatic and direct. This has many advantages, but it also has its downside and particularly in terms of work-life balance.

As a French lawyer in the English office of an American firm, my status was not always easy to determine internally. Yet, I managed to find my place and stand out in the department thanks to my knowledge in civil law and my skills in arbitration, but also likely, my perseverance. The partners I worked for trusted me, which allowed me to be involved in the heart of matters and deal directly with clients. I was able to attend most work meetings, whether in London or abroad, which is usually rare in practice for very junior associates.

In terms of litigation, it is hard to say whether Brexit had a direct impact on arbitration proceedings registered with the LCIA or those where the parties chose London as the seat of their arbitration. I guess it is still too early to draw definitive conclusions. We would need to compare the number of arbitrations where the arbitration clause was signed before and after Brexit in order to observe an objective change in the drafting of contracts by international trade operators. However, to date, few contracts signed after Brexit have resulted in arbitration. This is however an issue that I follow closely and please be sure I will get back to you on this matter!

Regarding the substance of the cases, I can however confirm that Brexit raised a multitude of issues, uncertainties and therefore additional due diligence. As each case is very different, it is difficult to identify trends, at least from my own perspective.

In terms of recruitment, I can unfortunately already note a significant impact for European lawyers in English law firms who are forced to apply for visas and whose status is uncertain, as well as lawyers practicing in London but not qualified in England.

Q3. On a day to day basis, do you deal more often with arbitration or litigation disputes? In your opinion, do you think that both fields are essential to each other?

In London, I worked exclusively on arbitration matters. Since I have moved to Paris, I am reintroducing litigation into my practice. This is in fact one of the reasons why I decided to return to France: practice more litigation and advocacy before national courts, which in England is exclusive to barristers.

I consider litigation to be indispensable to the practice of arbitration and it is, in any event, an essential supplement. Proceedings before the support judge ("juge d'appui"), the enforcement judge or the Court of Appeal i.e., challenge or annulment of awards etc., are peri-arbitral proceedings that any arbitration practitioner shall absolutely need to master. There is a general trend to restrict arbitration to the proceedings before the arbitrators. However, the ultimate purpose of arbitration proceedings is to obtain an award recognised or enforced before domestic courts.

Q4. You have now joined Medici Law firm as an Associate, are you intending to specialize in commercial or investment treaty arbitration, and why?

I like both very much, it will be difficult to choose!

At Medici, we have the chance to work on both commercial and investment arbitration, which is not common and really valuable. I hope to continue practicing both for as long as possible.

Yet, I am aware that commercial arbitration is much more important (in terms of quantity) than investment treaty arbitration. So in the long run, my experience will probably be more significant in commercial arbitration than in investment arbitration.

Q5. Equality between women and men in arbitration is part of the Medici DNA. Could you tell us more about the firm's commitments in this regard?

Medici was created in May 2020 by three partners who have always put gender equality at the center of their practice.

At Medici, this commitment is not a communication strategy but we take real actions. It is reflected, for example, in the creation of a endowment fund into which 10% of the firm's fees are transferred. This fund enabled us to co-finance the film "Sans suite" by Chloé Ponce-Voiron on violence against women. Difficult subject yet necessary. We look forward to introducing it to you as soon as the cinemas reopen.

Furthermore, in the context of the Promotion and Equality Commission of the European Bars Federation (FBE), we have recently drafted a questionnaire on gender equality within the legal profession and circulated it to all FBE member bars. This survey will hopefully enable us to obtain an objective assessment of the regulations already implemented within the several European bars. This will then enable us to draft a Guide of Best Practices as a reference for each bar institution and to continue the work of Gisèle Halimi by proposing a harmonisation of legislation from the top with a "most-favoured European woman" clause.

We also deal with pro-bono cases for victims of domestic violence, gender discrimination, etc. This list is obviously not exhaustive.

I am happy and proud to be part of this team and to carry these values into my practice. I would like to point out - if necessary - that feminism is above all a humanist and universal movement and therefore the firm does not define itself as "exclusively female".

Q6. What advice would you give to young students wanting to have a successful career in arbitration?

Be meticulous, proactive and committed. Do not hesitate to follow-up with law firms in respect of your application. The application process is not always automated so it's very important to stand out from the large volume of urgent emails received every day.

There are many events that you cannot control but you can always trigger opportunities by making sure you are in the right place at the right time.
Finally, work with people you like and value, it will make your days infinitely happier.

EVENTS OF THE NEXT MONTH

May 5th, ICC 2021 Rules of Arbitration – Regional Launch in Hungary, Croatia, Slovakia

ONLINE

Launch event co-organized by the Hungarian Arbitration Association and ICC Croatia will introduce the amendments to the 2021 ICC Rules of Arbitration that have entered into force on 1st January 2021.

Website: https://2go.iccwbo.org/icc-2021-rules-of-arbitration-regional-launch-in-hungary-croatia-slovakia.html

May 6th, Fireside chat with arbitration and dispute resolution leaders

ONLINE

Online Event hosted by the Chartered Institute of Arbitrators and the ICC International Court of Arbitration where Ann Ryan Robertson C. Arb FCIArb and President-Elect of the ICC International Court of Arbitration, Claudia T Salomon FCIArb will discuss their plans for their respective institutions, how they intend to collaborate and what their presidencies mean for the global arbitration and dispute resolution community.

Website: https://2go.iccwbo.org/fireside-chat-with-arbitration-and-dispute-resolution-leaders.html

From May 10th to May 14th, London International Disputes Week (LIKW) 2021

ONLINE

Second London International Disputes Week which includes 16 virtual sessions delivered by leading experts in their fields.

Website: https://2021.lidw.co.uk/

May 11th, ICC YAF: Do's and don'ts to win an arbitration

ONLINE

Discussion that will address procedural and practical advices on how to win an arbitration.

Website: https://2go.iccwbo.org/icc-yaf-do-s-and-don-ts-to-win-an-arbitration.html

May 11th, ICC 2021 Rules of Arbitration – Launch in Anglophone Africa

ONLINE

This event will present the positions taken by the ICC International Court of Arbitration in this ninth revision of its arbitration Rules.

Website: https://2go.iccwbo.org/icc-2021-rules-of-arbitration-launch-in-anglophone-africa.html

May 14th, ICC YAF: The unwritten rules of starting a career in international arbitration

ONLINE

Interactive discussion about soft skills for very young practitioners in international arbitration.

Website: https://2go.iccwbo.org/icc-yaf-the-unwritten-rules-of-starting-a-career-in-international-arbitration.html

May 19th, ICC YAF: Efficiency and Transparency in the 2021 ICC Rules of Arbitration

ONLINE

Discussion around major transparency and efficiency related challenges faced by the parties in arbitration.

Website: https://2go.iccwbo.org/icc-yaf-efficiency-and-transparency-in-the-2021-icc-rules-of-arbitration.html

May 20th, ICC YAF: Quantification of damages in complex M&A disputes

ONLINE

Roundtable to discuss the quantification of damages in complex M&A disputes.

Website: https://2go.iccwbo.org/icc-yaf-quantification-of-damages-in-complex-m-a-disputes.html

May 24th, LCIA Live: Insights from the Institution

ONLINE

Interactive conference with the LCIA Director General, Professor Dr Jacomjin van Haersolte-van Hof. This event will have a particular emphasis on Russia and other CIS Jurisdictions.

Website: https://www.lcia.org/events/2021-lcia-live-insights-from-the-institution-238.aspx

From May 25th to May 28th, 6th ICC Asia Conference on International Arbitration

ONLINE

The ICC annual Asia Conference will keep you up-to-date with the latest regional developments in international arbitration.

Website: https://2go.iccwbo.org/icc-asia-conference-on-international-arbitration.html

May 25th, ICC SME LAB SERIES – Legal essentials for start-ups: Future-proofing your business using ICC Model Contracts

ONLINE

Conference on the know-how needed to draft contracts to protect business ventures.

Website: https://2go.iccwbo.org/icc-sme-lab-series-legal-essentials-for-start-ups-future-proofing-your-business-using-icc-model-contracts.html

May 25th & May 26th, CIS-related Disputes: Treaties, Sanctions, Compliance and Enforcement

ONLINE

Two-days conference on some of the most challenging problems arising out of disputes related to Russia, Ukraine, Kazakhstan, and other countries of the CIS region.

Website: http://www.cisarbitration.com/2021/03/09/cis-related-disputes-treaties-sanctions-compliance-and-enforcement/

May 26th & May 27th, ICC Institute Advanced Training – 'Catch me if (and while) you can: How to Navigate Interim Measures in International Arbitration'

ONLINE

Advanced training program on strategic, procedural, and practical considerations when requesting interim measures.

Website: https://2go.iccwbo.org/icc-institute-advanced-training-how-to-navigate-interim-measures-in-international-arbitration.html